

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-03-CF-334
	)	
JMK Communications, Inc.	)	NAL/Acct. No. 200432340004
Licensee of Station WPWC(AM)	)	FRN 0006-1615-09
Dumfries, Virginia		

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 9, 2006****Released: February 14, 2006**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. By this *Memorandum Opinion and Order* (“Order”), we grant in part and deny in part the petition for reconsideration, filed on January 26, 2005 by JMK Communications, Inc. (“JMK”),<sup>1</sup> licensee of AM Radio Station WPWC, Dumfries, Virginia, of the Enforcement Bureau’s (“Bureau”) *Forfeiture Order*, released December 27, 2004.<sup>2</sup> The *Forfeiture Order* imposed a forfeiture of fourteen thousand dollars (\$14,000) upon JMK for its willful and repeated violation of Sections 73.1745(a), 73.3526(e)(5), and 73.3526(e)(12) of the Commission’s Rules (“Rules”)<sup>3</sup> by operating station WPWC at unauthorized power levels and failing to place the most current ownership report and an issues/programs list in WPWC’s public inspection file.

**II. BACKGROUND**

2. On July 2, 2003, an agent from the Commission’s Columbia, Maryland Field Office (“Columbia Office”) conducted an inspection of station WPWC. The agent found that WPWC’s Emergency Alert System (“EAS”) equipment was installed at the station’s unattended transmitter, and noted that its monitoring and transmitting functions were not available to the station’s operators. The agent also found that, according to the station’s logs, WPWC operated with its daytime power and antenna during nighttime hours. WPWC’s authorized daytime power was 1080 watts while its authorized nighttime power was 540 watts. The station’s logs indicated that WPWC changed to its nighttime power level and antenna at 8:30 p.m. instead of the authorized 8:15 p.m. on May 4, 2003 and from May 8 through May 19, 2003. The agent also discovered that JMK’s public inspection file included neither station WPWC’s most recent ownership report nor a current and complete issues/programs list. On August 7, 2003, the Columbia Office sent a *Letter of Inquiry* (“LOI”) to JMK to clarify issues raised by the inspection concerning, *inter alia*, station logs, transmitter operating power and the public inspection file. JMK responded to the LOI on August 22, 2003.

<sup>1</sup> JMK initially filed an Application for Review on January 26, 2005. On October 24, 2005, JMK withdrew its Application for Review and agreed to have its submission treated as a petition for reconsideration. The document filed on January 26, 2005 will hereinafter be referred to as a petition for reconsideration.

<sup>2</sup> *JMK Communications, Inc.*, 19 FCC Rcd 24808 (Enf. Bur. 2004).

<sup>3</sup> 47 C.F.R. §§ 73.1745(a), 73.3526(e)(5), and 73.3526(e)(12).

3. After considering JMK's response to the *LOI*, the Columbia Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL")<sup>4</sup> to JMK in the amount of \$22,000 for: (1) failing to ensure that WPWC's EAS monitoring and transmitting functions were available and operational during the times the station was in operation, in apparent willful and repeated violation of Section 11.35(a) of the Rules;<sup>5</sup> (2) operating at unauthorized power levels, in apparent willful and repeated violation of Section 73.1745(a) of the Rules; (3) failing to place into the public inspection file the most current ownership report, in apparent willful and repeated violation of Section 73.3526(e)(5) of the Rules; and (4) failing to place into the public inspection file a complete issues/programs list in apparent willful and repeated violation of Section 73.3526(e)(12) of the Rules.

4. On April 5, 2004, JMK responded to the *NAL*. In its response, which included a declaration made under penalty of perjury by the station's chief engineer, Alfred Hammond, JMK sought cancellation or reduction of the forfeiture. After considering JMK's response to the *NAL*, including Mr. Hammond's declaration, the Bureau issued the underlying *Forfeiture Order* on December 27, 2004, in which it cancelled the forfeiture amount attributable to the EAS violation, thereby reducing the forfeiture amount to fourteen thousand dollars (\$14,000), but found the remaining violations to be willful and repeated. On January 26, 2005, JMK filed a petition for reconsideration of the *Forfeiture Order*. In its petition for reconsideration, JMK does not dispute the background facts of the case. With respect to the remaining violations, however, JMK does dispute the Bureau's interpretation of a pertinent question asked by the Columbia Office in the *LOI* and JMK's response thereto, as well as the Bureau's handling of Mr. Hammond's declaration.

### III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended ("Act"),<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>8</sup> In examining JMK's petition for reconsideration, Section 503(b) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any such other matters as justice may require.<sup>9</sup>

#### A. Operating at Unauthorized Power Level Violation

6. Background. Section 73.1745(a) of the Rules states that no broadcast station shall operate with power other than that specified and made a part of the license unless otherwise provided in Part 73 of the Rules. JMK has been assessed a forfeiture for its overpower operation of Station WPWC based on the response it gave to an *LOI* question asked by the Columbia Office. The Bureau has imposed forfeitures for violation of this rule as a licensee is expected to operate in a manner consistent with its license.<sup>10</sup>

<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432340004 (Enf. Bur., Columbia Office, released March 4, 2004).

<sup>5</sup> 47 C.F.R. § 11.35(a).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> See *M.B. Communications, Inc.*, 20 FCC Rcd 9536 (Enf. Bur. 2005); *Jason Konarz*, 19 FCC Rcd 19562 (Enf. Bur. 2004).

7. At the time of the inspection, the investigating agent reviewed WPWC's station logs. As a result of the agent's review of the logs, the Columbia Office sent an LOI to JMK, the licensee. The LOI set forth the agent's observations regarding the station logs, which noted unvarying operating parameters, and inquired as to the accuracy of the logs as they related to the station's operation. In its response to the LOI, JMK claimed that the logs accurately reflected the station's operation. After considering JMK's response to the LOI and the agent's contemporaneous observation of the station logs, the District Director of the Columbia Office considered the station logs to be accurate. In making the determination that WPWC's station logs were accurate, the District Director was also determining that each log page that indicated that Station WPWC changed from daytime to nighttime power after the authorized 8:15 p.m., represented an overpower violation. Thus, the District Director issued an NAL which included a proposed forfeiture amount of four thousand dollars (\$4,000) for JMK's operation of station WPWC at excessive power levels on May 4, 2003 and from May 8 to May 19, 2003, as was indicated by the station logs.

8. On April 5, 2004, JMK filed a response to the NAL, which included a declaration by Mr. Hammond. In his declaration, Mr. Hammond stated that the changeover to nighttime power and antenna is controlled by a reliable computer and is not linked to manual logging. Thus, Mr. Hammond claimed that, notwithstanding an inadvertent error in preparing the logs, the nighttime power limits were not exceeded. The Bureau, finding that JMK first stated that the station logs were accurate and then submitted a sworn declaration that the station logs were not accurate, concluded it appropriate to rely on the investigating agent's contemporaneous observations of the station log that indicated the station did not switch to nighttime power at 8:15 as required and imposed a forfeiture for WPWC's overpowered operation in the *Forfeiture Order*.

9. Discussion. In its January 26, 2005 petition for reconsideration of the *Forfeiture Order*, JMK asserts that the Bureau misinterpreted its response to the LOI question at issue. JMK asserts that it did not represent that its logs were fully accurate. JMK further asserts that the LOI question asked, and its answer, referred only to transmitter operating parameters, tower lights and EAS. JMK also states that the LOI never asked and JMK never addressed the question of whether the station log accurately reflected the times of its daytime and nighttime operation. We disagree. The LOI question noted that WPWC's transmitter operating parameters were the same day after day. Transmitter operating parameters include the power levels at which the station is operating. Thus, we believe that the operating parameters referred to in the LOI included operating power. However, the issue here is whether WPWC's station logs were accurate as regards WPWC's changeover times between day and night-time power.

10. We believe JMK initially indicated that WPWC's station logs were correct with regards to the times the station changed power. However, JMK has submitted a sworn statement from Mr. Alfred Hammond, WPWC's chief engineer, in which he stated that he is "sure the log was in error" and that it did not reflect improper operation of the station. Although we believe JMK made two conflicting statements regarding the accuracy of the station logs, we also recognize that we have no extrinsic evidence to definitively establish that JMK failed to change WPWC from day to night-time power at the required time on the days in question. For this reason, and given Mr. Hammond's sworn declaration, we cancel the portion of the forfeiture that had been attributed to the overpower violation.

11. Section 73.1800 provides that all station entries, whether required or not, must accurately reflect station operation.<sup>11</sup> JMK, through Mr. Hammond's declaration, has acknowledged that WPWC's station logs were not accurate with respect to its changeover times on the subject dates. We remind JMK of its obligation, as a Commission licensee, to exercise due diligence when answering questions in response to a Commission inquiry. Further, we believe that an admonition is warranted for JMK's

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<sup>11</sup> 47 C.F.R. § 73.1800.

violation of Section 73.1800 by failing to accurately reflect WPWC's operation in its station log.<sup>12</sup>

## B. Public Inspection File Violations

12. Background. The public file rules are rooted in Section 307(b) of the Act<sup>13</sup> and codified in Part 73 of the Rules. Section 73.3526(b) of the Rules states that the public inspection file must be maintained at the main studio of the station.<sup>14</sup> The Commission has found that reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance, and fostering community involvement with local stations, thus helping to ensure that stations are responsive to the needs and interests of their local communities.<sup>15</sup>

13. Section 73.3526(e)(5) of the Rules requires commercial broadcast stations to place a copy of the most recent, complete ownership report in the public inspection file. Section 73.3526(e)(12) of the Rules requires commercial broadcast stations to place in the public inspection file every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three months. JMK admits that neither the latest ownership report nor a complete issues/programs list was in the public inspection file on the date WPWC was inspected. The Bureau has imposed forfeitures for violation of these rules as a licensee is expected to comply with the public inspection file rules.<sup>16</sup>

14. Discussion. JMK contends that the \$10,000 forfeiture assessed for its public file violations is inappropriate. Although JMK admits the two public file violations, it argues that the proposed forfeiture amount is excessive in comparison to forfeiture amounts that have been assessed for more severe public file infractions. In support, JMK cites *Community Broadcasting, Inc.*, a case in which a \$2,500 forfeiture was imposed for a public inspection file that lacked the most current ownership report and a contour map (forfeiture reduced to \$2,000 for other reasons). We agree that a reduction of the forfeiture amount assessed for JMK's public inspection file violations is appropriate. We do not, however, agree with the amount proposed by JMK. Consistent with *Community*, we find that the appropriate amount to be assessed for JMK's violation of Section 73.3526(e)(5) of the Rules by not having the most current ownership report in its public inspection file is \$1,250.<sup>17</sup> We also find that the appropriate amount to be assessed for JMK's violation of Section 73.3526(e)(12) of the Rules by not having an adequately detailed issues/programs log in its public file is \$4,000.<sup>18</sup> Therefore, we reduce the forfeiture amount attributable to the public inspection file violations from \$10,000 to \$5,250.

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<sup>12</sup> See *WKLC, Inc.*, 20 FCC Rcd 13554 (Enf. Bur. 2005) (licensee admonished for a violation for which it had not previously been cited).

<sup>13</sup> 47 U.S.C. § 307.

<sup>14</sup> This Rule was modified in 1998 to provide, among other things, more flexibility regarding the location of a radio station's public files. Licensees were required to provide ready access to those files. *Review of the Commission's Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691 (1998).

<sup>15</sup> *Id.* at 15700.

<sup>16</sup> See *Community Broadcasting, Inc.*, 19 FCC Rcd 22502 (Enf. Bur. 2004) (forfeiture imposed for missing ownership report); *Capstar TX Limited Partnership c/o Doran Bunkin, Esq.*, 18 FCC Rcd 20203 (MB 2003) (\$4,000 forfeiture imposed for missing issues/programs lists).

<sup>17</sup> See *Community Broadcasting, Inc., Notice of Apparent Liability*, NAL/Acct. No. 200432340004 (Enf. Bur., Columbia Office, released March 4, 2004; upheld by *Community Broadcasting, supra* (reduced for other reasons)).

<sup>18</sup> See *Capstar, supra*; *Capstar TX Limited Partnership c/o Doran Bunkin, Esq.*, 18 FCC Rcd 20199 (2003) (\$4,000 forfeiture assessed because station's public inspection file lacked an adequate issues/programs list).

#### IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act<sup>19</sup> and Section 1.106 of the Rules,<sup>20</sup> the petition for reconsideration filed by JMK Communications, Inc. of the Enforcement Bureau's *Forfeiture Order* for the NAL/Acct. referenced herein is **GRANTED** to the extent indicated above and **DENIED** in all other respects.

16. **IT IS FURTHER ORDERED** that JMK Communications, Inc. is hereby **ADMONISHED** for its failure to accurately reflect Station WPWC's operation in its station log.

17. **IT IS ALSO ORDERED THAT**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, ("Act") and Section 1.80(f)(4) of the Rules,<sup>21</sup> JMK Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand two hundred fifty dollars (\$5,250) for willfully and repeatedly violating Sections 73.3526(e)(5), and 73.3526(e)(12) of the Rules.

18. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>22</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, SW, Room 1A625, Washington, DC 20554.<sup>23</sup>

19. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to JMK Communications, Inc., 4525 Wilshire Boulevard, Los Angeles, California 90010, and its counsel, Peter Gutmann, Esq., at Womble Carlyle Sandridge & Rice, PLLC, 1401 Eye Street, NW, 7<sup>th</sup> Floor, Washington, DC 20005.

#### FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>19</sup> 47 U.S.C. § 405.

<sup>20</sup> 47 C.F.R. § 1.106.

<sup>21</sup> 47 C.F.R. §§ 0.111, 0.311, and 1.80(f)(4).

<sup>22</sup> 47 U.S.C. § 504(a).

<sup>23</sup> See 47 C.F.R. § 1.1914.